

In re: GARDEN FRESH FRUIT MARKET, INC.
PACA Docket No. D-01-0011.
Decision Without Hearing By Reason of Default.
Filed September 6, 2001.

Ruben D. Rudolph, Jr., for Complainant.
Respondent, Pro se.
Decision issued by James W. Hunt, Administrative Law Judge.

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §499a *et seq.*; hereinafter referred to as the "Act"), instituted by a Complaint filed on March 1, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleges that during the period August 23, 1998, through June 24, 1999, Respondent, Garden Fresh Fruit Market, Inc., (hereinafter "Respondent") failed to make full payment promptly to 28 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$394,961.67 for 164 lots of fruits and vegetables, which it received, accepted, and sold in interstate and foreign commerce.

A copy of the Complaint was served upon Respondent by certified mail on July 9, 2001. Respondent did not file an answer. The time for filing an answer having run, and upon motion of the Complainant for the issuance of a default order, the following Decision and Order shall be issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Finding of Fact

1. Respondent is a corporation whose business address is 126 Valencia N.E., Suite A, Albuquerque, New Mexico 87198, and whose mailing address is 300 Airport Road, N.W., Albuquerque, New Mexico 87121.

2. At all times material herein, Respondent was licensed under the provisions of the Act. License number 951755 was issued to Respondent on August 9, 1995. This license terminated on August 9, 2000, pursuant to section 4(a) of the Act (7 U.S.C. §499d(a)), when Respondent failed to pay the required annual renewal fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth more fully in paragraph III of the Complaint, during the period August 23, 1998, through June 24, 1999, Respondent failed to make full payment promptly to 28 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$394,961.67 for 164 lots of fruits and vegetables, which it received, accepted, and sold in interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact Number 4 above, constitutes willful, flagrant, and repeated violations of section 2(4) of the Act (7 U.S.C. §499b(4)), for which the Order below is issued.

A finding is made that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the Act (7 U.S.C. §499b), and the facts and circumstances set forth above shall be published.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings after thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceedings within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R.. §1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final October 15, 2001. - Editor]
